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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

CONSOLIDATED RAIL CORPORATION, )  
a/k/a CONRAIL )

Defendant. )

CIVIL ACTION NO.  
S90-00056

STATE OF FLORIDA )

COUNTY OF DUVAL )

The deposition of J. M. McGUIGAN, taken on behalf of the Plaintiff, pursuant to Notice of Deposition of James McGuigan, in the above-entitled action, commencing at approximately 10:00 a.m., on Tuesday, February 23, 1993, at the U.S. Attorney's Office, 311 West Monroe Street, Jacksonville, Duval County, Florida, before Elizabeth M. Baxley, RPR-CP, and a Notary Public in and for the State of Florida at Large.

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A P P E A R A N C E S

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- - -

T A B L E O F C O N T E N T SWITNESSPAGE**J. M. McGUIGAN**

Direct Examination

By Mr. Ruvolo

4

Cross-Examination

By Mr. Cunningham

28

Cross-Examination

By Mr. Ermilio

35

Further Cross-Examination

By Mr. Cunningham

38

Redirect Examination

By Mr. Ruvolo

39

- - -

E X H I B I T S

FOR IDENTIFICATION:

Plaintiff's Exhibit A

16

- - -

S T I P U L A T I O N

It was stipulated and agreed by and between counsel for the respective parties, and the witness, J. M. McGUIGAN, that the reading and signing of the following deposition be waived.

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J. M. McGUIGAN,

having been produced and first duly sworn as a witness on behalf of the Plaintiff herein, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RUVOLO:

Q Good morning, Mr. McGuigan. My name is Peter Ruvolo, and I'm an attorney with the Justice Department, and we represent the Environmental Protection Agency.

We've brought this civil action against Conrail in regards to alleged groundwater contamination out at the Elkhart Yard in Indiana.

I think you know -- you've met Mr. Ermilio, who is an attorney for Conrail, and Mr. Cunningham, who represents Penn Central, which was the predecessor to Conrail.

If there's any question I ask that you don't understand, please don't hesitate to say so. If you

1 need a break or would like to take a break at any time,  
2 just raise your hand and we'll do that. And let's go  
3 from there.

4 Give us an address, please.

5 (b) (6)  
6

7 Q And a telephone number at which you can be  
8 reached.

9 A Area Code (b) (6)

10 Q Mr. McGuigan, you were served with a notice to  
11 take deposition under subpoena, were you not, to be  
12 here today?

13 A I received a letter in the mail to James  
14 McGuigan, which is not my name.

15 Q I see. But you did receive it and you are  
16 here?

17 A Yeah

18 Q Okay. You were requested at that time, I  
19 think, to bring any documents that you might have in  
20 regard to your employment.

21 A Yeah.

22 Q Did you bring any documents?

23 A No.

24 Q There was a cover letter with that notice,  
25 was there not, advising you that you were not a party

1 to this action --

2 A Yes.

3 Q -- and that you had a right to counsel if you  
4 so desired. And you chose not to, correct?

5 A (Nods head affirmatively.) Right.

6 Q She can't hear the nod.

7 Okay. Tell us a little bit about yourself.

8 You're now retired?

9 A Yes.

10 Q And when did you retire?

11 A January 1, 1987.

12 Q And how long had you been with the railroad?

13 A I retired from CSX. I had been with -- I was  
14 employed by CSX from April the 4th, 1976.

15 Q Who is CSX?

16 A That is the merged corporation consisting of  
17 Seaboard Coast Line, Atlantic Coast Line, L & N,  
18 Clinchfield, Chessie System, B & O and Western  
19 Maryland.

20 Q Have you had any relationship at all with Penn  
21 Central?

22 A Yes.

23 Q In what capacity?

24 A Prior to April 1, 1976, I was employed by Penn  
25 Central. The last position I had was chief mechanical

1 officer.

2 Q And how long had you been with Penn Central?

3 A Since it was formed by the merger of the New  
4 York Central and the Pennsylvania Railroad.

5 Q And have you ever had anything to do, or were  
6 you employed with Conrail?

7 A No. I was never employed by Conrail.

8 Q And as chief mechanical officer, where were  
9 you stationed, or where was your --

10 A In Philadelphia, Pennsylvania.

11 Q And what were your functions and  
12 responsibilities overall.

13 A I had the overall responsibility for the  
14 maintenance and repair of all the rolling stock of the  
15 Penn Central Railroad. Locomotives and freight cars,  
16 primarily. And the passenger cars. Prior to Amtrak.

17 Q Did you have anything to do with tank cars?

18 A I didn't hear you.

19 Q Did you have anything to do with tank cars?  
20 As contrasted to freight cars.

21 A Tank cars?

22 Q Uh-huh. The cars that, you know, they --

23 A I know. I know what you're talking about. I  
24 don't -- they're like any other car. I mean --

25 Q Uh-huh.

1           A     -- we had to keep them under repair, and keep  
2     them going, and inspect them and so on and so forth.

3           Q     And as chief mechanical officer, did you  
4     actually run a shop, or were you in charge as  
5     supervisor for other mechanical officers in various  
6     yards?

7           A     I was the -- I was on the staff of the  
8     president.

9           Q     Uh-huh.

10          A     And, as such, my primary responsibility was to  
11     develop the practices and the policies that the company  
12     generated for the repair of their equipment. And a  
13     major part of my responsibility was the budgetary  
14     controls and restraints that were necessary, because we  
15     were in bankruptcy.

16          Q     Was part of your responsibility the  
17     determination of the ordering of materials and supplies  
18     for the repairs?

19          A     The actual ordering of the materials and  
20     supplies was done by our purchasing department.

21          Q     But did you have a say in what was ordered or  
22     what type of equipment or materials were used?

23          A     Well, if a supplier would come in with a  
24     commodity that he or his firm claimed were the superior  
25     to some others that we were using, we would, of course,

1 investigate that, particularly if it was more cost  
2 effective.

3 Q Okay.

4 A We had a small group of engineers, chemists, I  
5 believe, that this type of commodity would be referred  
6 to. And they would investigate it, and either accept  
7 it or reject it.

8 Q So, for example, if a material was declared  
9 possibly hazardous, it would not be your function to  
10 determine that, whether it should be used or not, but  
11 it might be determined by the chemists or somebody in  
12 that department? If there was to be a change in the  
13 use of a material or a product, for example, that you  
14 were using?

15 A Well, we certainly wouldn't use anything that  
16 would be in violation of any -- toxic, or, you know --  
17 from an environmental stand. I mean, we wouldn't do  
18 that.

19 Q No, I know you would not do that  
20 intentionally.

21 But, there were products at one point that  
22 were used on a day-to-day basis by everybody in this  
23 country. For example, carbon tetrachloride was used as  
24 a cleaning fluid by tailor shops. Then came a point  
25 where it was declared a hazardous material, and a new

1 product would be used. And that was taken off or  
2 reduced -- the usage was reduced.

3 Would that be a function of yours or would  
4 that be a function of somebody else in Penn Central who  
5 would say: Stop using this product and start using  
6 this product, because it's less hazardous, or it's  
7 nonhazardous?

8 A Well, if the product were going to be used in  
9 the maintenance of equipment, it would be the  
10 responsibility of my group to determine if that met all  
11 the environmental regulations.

12 Now, if it were going to be -- if the product  
13 was going to be used for some other purpose, such as  
14 clean a building, or painting a bridge, or stripping  
15 paint from a structure or something, that would be the  
16 responsibility of the user department that was in  
17 charge of that work.

18 If it was going to be used on cars and  
19 locomotives, it would be the mechanical department's  
20 responsibility. So, it all depends on what the product  
21 was designed for.

22 Q Do you recall what products were in use other  
23 than -- I mean, I know you have the actual parts to the  
24 locomotives or the engines. But, other than that, do  
25 you recall what kind of products were used for cleaning

1 or degreasing or something of that nature?

2 A I do not recall.

3 Q Did you, prior to becoming the chief  
4 mechanical officer, did you yourself work on repairing  
5 locomotives or freight cars or others?

6 A When I first started to work for the  
7 Pennsylvania Railroad, in March of 1948, after I  
8 graduated from college, I started on a training  
9 program, a management-training program. And we were  
10 moved around the system, actually observing firsthand  
11 the work that was going on on the floor, so to speak.

12 Then we were placed in different levels of  
13 supervision and, depending upon our progress and  
14 development and so forth, we were promoted to higher  
15 and higher positions.

16 So, when it comes right down to actually  
17 having a job as a mechanic in a diesel shop, no, I  
18 never did. Or a job as a car repair repairman in a car  
19 yard, no, I never did. I -- I was -- that wasn't the  
20 type of work that I was doing.

21 Q Yours was more of an administrative function?

22 A Exactly.

23 Q Your responsibility was the operation of the  
24 department as a whole, not a particular --

25 A That's right.

1 Q -- job, per se.

2 You mentioned before that, in '76, that was  
3 the period that Penn Central was involved in the  
4 bankruptcy situation. Was there a change in policy or  
5 a change in attitude at Penn Central because of that  
6 situation?

7 A What --

8 Q Well, I mean, I imagine --

9 A It went into bankruptcy in 1970.

10 Q Right. I imagine there were some cost-cutting  
11 measures taken.

12 A Well, certainly there was. Every nickel was  
13 squeezed as hard as it could. We were operating under  
14 very severe monetary restrictions. And every  
15 opportunity, you know, that came up, that would permit  
16 us to perform our work properly but at less cost, we  
17 could adopt, naturally.

18 During that period of time, rather than --  
19 rather than cut corners as far as, you know, safety was  
20 concerned, I elected to start a program of massive  
21 retirement of equipment. We retired many, many, many,  
22 many freight cars that were right on the borderline as  
23 far as being repaired or not being repaired, because we  
24 had just so many maintenance dollars, and they had to  
25 be spent very wisely.

1           And rather than try to spread that out over  
2 the entire fleet of 200,000 freight cars, we elected to  
3 start a policy of attrition, rapid attrition of the  
4 equipment, and thereby we could spend our money on  
5 freight cars that were more up to date, and at the same  
6 time do a reasonable job as far as keeping them  
7 running.

8           That was probably the -- well, that was our  
9 major policy, I suppose, during that period of time.

10          Q     Would you characterize it as a downsizing but  
11 a modernization --

12          A     Right.

13          Q     -- at the same time?

14          A     That's right. And we kept the place running  
15 up until, you know, Conrail took it over.

16          Q     Did Penn Central own most of these freight  
17 cars, or did they --

18          A     Well, yes and no. They -- I think most of  
19 them were probably on equipment trusts, which was a  
20 form of leasing. Later on, most of it was leasing.  
21 Earlier on, it was equipment trust financing that was  
22 done.

23          Q     How about the locomotives?

24          A     Same thing.

25          Q     Same thing.

1           Were there particular yards that did repairs  
2 of locomotives or freight cars or tank cars?

3           A     Yes, yes, yes. We -- that's another thing  
4 that we started. We couldn't afford to keep all the  
5 shops open, so we would close several of them and  
6 concentrate our efforts on the major points. Rather  
7 than have them all cut up, die on the vine, we elected  
8 to eliminate an awful lot of facilities or concentrate  
9 our work elsewhere, put our money where we had the more  
10 modern machinery, better skills, in the way of  
11 employees and so forth. That's the general of what we  
12 did.

13          Q     Are you familiar with some of the yards as to  
14 their specialty? For example, we had heard that  
15 Altoona was the key point for locomotive repairs.

16          A     Altoona was. It was the major location.

17          Q     And Dearborn, was that another major setup,  
18 or --

19          A     Dearborn?

20          Q     Yeah. Was there anything? Or did that come  
21 afterwards with Conrail, after Penn Central? Dearborn,  
22 Michigan, did you have any facilities out there? Or  
23 Chicago?

24          A     We didn't have any major mechanical facilities  
25 in Michigan.

1 Q Where else would they have been?

2 A We had a major locomotive -- I presume you're  
3 asking about locomotives?

4 Q Yes.

5 A The major locomotive facility was in Juniata,  
6 which was in Altoona, in the Altoona area. We also had  
7 a major locomotive repair point in Collingwood, outside  
8 of Cleveland. There were other locations that I would  
9 not term as major, but they were important. But  
10 certainly Dearborn, there wasn't anything in Dearborn.

11 Q How about freight cars?

12 A Where?

13 Q Freight cars.

14 A Oh, freight cars.

15 Q As contrasted to locomotives.

16 A Our major freight car repair shop was  
17 Holidaysburg, Pennsylvania, which is outside of  
18 Altoona. And also Beech Grove, Indiana, which we  
19 successfully sold to Amtrak.

20 Q Uh-huh.

21 A One other location that I had forgotten about  
22 was Wilmington, Delaware, where we repaired our  
23 electric locomotives. But they were pretty much on the  
24 way going out anyway.

25 Q What, if anything, was out at Elkhart?

1 A Elkhart was not a major location.

2 Q For repairs --

3 A For repairs.

4 Q -- equipment repairs.

5 A I would characterize Elkhart as primarily a  
6 filling-station operation.

7 Q Was the humping operation in existence at  
8 Elkhart?

9 A I believe so. But I'm not familiar with that.  
10 I believe they were humping.

11 Q Did you ever have anything to do with the  
12 Elkhart Yard other than general overall supervision?

13 A No.

14 Q Mr. McGuigan, there was a memorandum that you  
15 sent around way back when -- if I can find it -- which  
16 I'd like to mark as Exhibit A, if you would. Let's let  
17 her mark it, first.

18 (Thereupon, the document last-above referred  
19 to was marked for identification as Plaintiff's  
20 Exhibit A.)

21 MR. ERMILIO: That's Exhibit A, Peter?

22 MR. RUVOLO: Yes.

23 MR. CUNNINGHAM: Do you have an extra copy?

24 MR. RUVOLO: I'm really not going to go into  
25 it line by line. You're welcome to look at it.

1 (Tendering document.)

2 MR. CUNNINGHAM: Sure.

3 BY MR. RUVOLO:

4 Q Just let me identify it a little better. It's  
5 a memorandum dated January 20th, 1975, the subject  
6 being electrical cleaners.

7 I was wondering if you could just tell us  
8 about the circumstances surrounding that memorandum,  
9 how it arose and what your purpose was and who these  
10 people were that you sent it to.

11 A Well, can I say something, explain this to you  
12 a little bit, our procedures and the way we operated on  
13 the railroad?

14 Q Yes. But it can be on the record.

15 A Okay. This letter is what I would term a  
16 desk ten letter.

17 Q Meaning?

18 A Written by R.T.N., which, I believe, is  
19 Mr. Noonan, with a stenographer by the initials of W.  
20 Now, what the W stands for, I don't know. Wanda, or  
21 whatever her name might be.

22 Q I follow.

23 A Okay. Now, that's who wrote the letter.

24 Q And who was Mr. Noonan? What was his position  
25 at the time?

1           A     Mr. Noonan worked for Mr. Reed, and I believe  
2     Mr. Reed was our chief chemist. And he was a chemist  
3     that worked for Mr. Reed.

4                 Now, without -- you've got to understand that  
5     this letter is, you know, 18 years old.

6           Q     Okay.

7           A     The normal procedure is that someone would  
8     come in with a product, as I explained before, be given  
9     to Mr. Reed. Mr. Reed would assign, probably,  
10    Mr. Noonan here to look into it. Mr. Noonan would look  
11    into it.

12                Apparently, he decided to make a change. All  
13    letters went out to the field over my signature  
14    irregardless (sic) of what they were. And he would  
15    prepare this letter, and it would go out. And these --  
16    this over here -- you'll notice this copy over here  
17    went to Mr. Reed.

18                And Mr. Reed made this note. One of the  
19    people he sent it to was Mr. Noonan. And he changed  
20    Mr. Noonan's letter. You'll notice he said to  
21    Mr. Noonan: I have changed this letter by adding so  
22    many people to the top of it and so on and so forth.

23           Q     So that is Mr. Reed's handwriting?

24           A     Yeah, that's Mr. Reed. That's Ken Reed's  
25    handwriting, see.

1 Q Okay.

2 A Now, this letter would --

3 Q That's on page two.

4 A That's on page two, yeah.

5 Q And who would the gentlemen be that are listed  
6 to be copied on that?

7 A Oh, to be copies?

8 Q Yes. On page two.

9 A Well, let me see if I can answer that  
10 question. Understand, it was 18 years ago.

11 Q I understand.

12 A J. C. White was on my staff as general  
13 superintendent of system shops. As such, he had  
14 overall jurisdiction of Holidaysburg, Juniata,  
15 Collingwood, Beech Grove.

16 Q Okay.

17 A Feeley, I don't know who Feeley -- I don't  
18 remember who Feeley is.

19 Dr. Simpson was our chief medical officer. He  
20 was the one that the various company nurses and company  
21 doctors, they evidently reported to him.

22 Q Why would he be notified?

23 A I don't know why he was notified, unless  
24 there's something here that would involve the medical  
25 department.

1 Q Who is Feeley again? I'm sorry.

2 A Huh?

3 Q Did you mention who Feeley was?

4 A I don't know who Feeley is. I may know, but I  
5 have forgotten. I mean, it's so long ago.

6 Sherron, I believe, is a purchasing agent. He  
7 was probably the vehicle through which this commodity  
8 came to us. That's generally the way it happens.

9 Q Okay.

10 A He would be the actual man that would purchase  
11 the commodity.

12 Q Right. One that was being substituted for the  
13 other. Is that right?

14 A Right.

15 Q He takes over and he orders it.

16 A He takes over and he orders it.

17 Zimmerman, I believe Zimmerman was our  
18 materials man. He would distribute the product after  
19 it was ordered. It would be ordered and sent to a  
20 central storehouse, and then he would perform the  
21 distribution of it to the various points.

22 Q I follow.

23 A Frank Manganaro, I remember him. He was our  
24 environmental specialist. He was supposed to keep us  
25 clean as far as the EPA was concerned. He was the

1 expert on all the environmental rules and regulations  
2 that were in effect --

3 Q Okay.

4 A -- so he naturally would be a copier for this  
5 letter.

6 Q Okay.

7 A Ken Reed, as I said, he was the chief chemist.  
8 And Harley, E. T. Harley, he reported to Harley.  
9 Harley was our general superintendent of locomotive  
10 engineering, or equipment engineering, I believe was  
11 his title. He was on my staff.

12 Q And the gentlemen on the top were all --

13 A These were all -- let's see. Let's see, who  
14 were these people? These were all -- these were all  
15 regional people. They were out in the field. They  
16 were all out in the field.

17 Let me see, who was who here. These people  
18 here on the right were in the major shops. I think  
19 that's what Mr. Reed was referring to. The shop  
20 managers.

21 Q Okay.

22 A He put the shop managers' names at the top of  
23 this letter to also receive a copy. If you notice,  
24 that's what he put down here.

25 And Mr. Fadale, he was in Juniata. And

1 Boughton was in -- Boughton, Boughton, Boughton. I  
2 believe Boughton was in Collingwood.

3 Thigpen was in Wilmington, Delaware. And  
4 Brennan, where was Brennan? I don't remember where  
5 Brennan was now. He could have been in Beech Grove,  
6 but I don't -- I don't -- I'm not sure.

7 Q The original eight in the left column and the  
8 center column, they were just mechanical --

9 A Yeah, yeah.

10 Q -- in the mechanical department?

11 A They were mechanical superintendents. Let's  
12 see, one was in New York, one was in Pittsburgh, one  
13 was in Detroit, one was in Indianapolis, one was in  
14 Chicago. I don't remember where he was now. I don't  
15 remember that.

16 But they were all basically out in the field.

17 Q At that time, do you know who would have  
18 jurisdiction over the Elkhart Yard? Would it be  
19 Chicago, or would it be Indianapolis, or some other --

20 A I don't remember.

21 Q Now, what would happen after a memo like this  
22 was issued? When I say "what would happen," what would  
23 happen to the original product? Would it be used up  
24 and then substituted as ordered when the new product  
25 came in, or would it be destroyed, or what?

1           A     Well, this letter says that the use of it  
2     would be -- the use of that type of cleaner will be  
3     discontinued effective immediately. So, they wouldn't  
4     use it, so I would presume they would do something with  
5     it. I don't know what they would do with it. I don't  
6     know.

7                     I don't even -- I don't even -- I don't even  
8     know what this is, to tell you the truth.

9           Q     Apparently some sort of a solvent which is  
10    used as a degreaser or something.

11          A     Uh-huh.

12          Q     You've never had any --

13                   MR. CUNNINGHAM: We object to the editorial  
14    comments. Not evidence. But I just want to note  
15    that.

16                   MR. RUVOLO: Objection noted.

17    BY MR. RUVOLO:

18          Q     You, yourself, had nothing personal to do with  
19    the ordering or the usage or anything of this  
20    equipment?

21          A     Not at all.

22          Q     Or of this substance?

23          A     No, no. See, our practices were that these  
24    letters would go out -- I'll make an editorial comment  
25    off the record.

1 MR. RUVOLO: Off the record.

2 (Off the record.)

3 BY MR. RUVOLO:

4 Q Keeping in mind, at the time, they may not  
5 have been considered hazardous materials, are you aware  
6 of any product that was used that might have contained  
7 carbon tetrachloride or tetrachloride ethylene or other  
8 materials that were subsequently considered hazardous?

9 A I'm not, no. No, I am not familiar with  
10 anything of that sort.

11 Q Are you aware of any changes that were made  
12 via the chemistry department or by Mr. Noonan or  
13 Mr. Reed because of changes in definition as to a  
14 hazardous material?

15 A Well, I imagine there were others. But I am  
16 not familiar with them, specifically. Those people  
17 were charged with the responsibility of seeing that the  
18 hazardous materials were not going to be used. And  
19 this is an indication that they were doing their job,  
20 as I look at it.

21 As far as I personally was concerned, I had no  
22 specific knowledge of any of this type of material.

23 Q Did any of your responsibilities cover the  
24 shipment --

25 A The what?

1           Q       -- the shipment of materials containing those  
2 chemicals, or any other chemicals? Did any of your  
3 responsibilities as chief mechanical officer, did any  
4 of your responsibilities include the shipment of  
5 liquified materials or liquified chemicals?

6           A       Well, other than the inspection of the cars  
7 themselves, no matter if it was shipped by a customer  
8 or by ourselves, we would make the air brake inspection  
9 of the car, we would check the wheels, make sure the  
10 car was safe to travel, that sort of thing. That would  
11 be our sole responsibility.

12                   We would not route the car. We wouldn't put  
13 the car in a particular train. We wouldn't -- we may  
14 have had instructions as to where these cars were  
15 supposed to be located within a train, but we wouldn't  
16 have anything to do with that.

17           Q       If there was an incident involving a major  
18 spill of a chemical, would you be called into it as  
19 part of your function, or would this be somebody else's  
20 responsibility?

21           A       Back in the early '70s, when this was -- it  
22 still wasn't really a major -- it wasn't as  
23 important -- let me put it that way -- as it is today.  
24 We were just beginning to recognize -- the country  
25 was -- just beginning to -- and Congress -- just

1 beginning to realize the importance of -- the dangers  
2 of hazardous material.

3 And a fledgling department was pretty much  
4 being formed in Penn Central at that time. And  
5 Frank Manganaro, who was on my payroll, was a very  
6 important part of that. He was our director of  
7 environmental regulations, or something like that. I  
8 forget now.

9 But it's quite possible he would be called  
10 in. But it would only be well after the -- well after  
11 the fact. The wreck would probably be cleaned up and  
12 the cars rerailed. And, you know, it wouldn't be a  
13 responsibility -- it would be the operating  
14 department's responsibility to clean up a wreck  
15 and determine whether anything was hazardous or  
16 not.

17 They would be the ones that would have the  
18 waybills covering the contents of the car, and whether  
19 it was hazardous or nonhazardous.

20 It was pretty much the operating department's  
21 responsibility. Although I could see coming -- let me  
22 put it that way -- I could see coming down the road  
23 where this was going to become of greater and greater  
24 importance to any company in the United States.

25 Q Okay.

1           A     I could almost see this coming at the time,  
2     you know.

3                     But, as far as the mechanical department was  
4     concerned, we would not be called in on a major  
5     derailment of this sort. It would be the operating  
6     department then that would handle it.

7           Q     If there was an emergency repair necessary,  
8     again, would that be --

9           A     Huh?

10          Q     I said, if there was an emergency repair  
11     necessary in a given situation, that would be also  
12     under the operating department, or the yard  
13     supervisors?

14          A     That would be the yard supervisors, yeah, not  
15     the operating department, or the car inspectors that  
16     worked in the yard, or the car repairmen that worked on  
17     the rip track. You know, we had a lot of little rip  
18     tracks where a car would come in, it needed a -- broke  
19     a pipe, or something like that, and they would replace  
20     the pipe --

21          Q     Uh-huh.

22          A     -- or something like that.

23                     MR. RUVOLO: Okay. I have no further  
24     questions. Thank you, Mr. McGuigan.

25                     THE WITNESS: Hope I helped you.

## CROSS-EXAMINATION

BY MR. CUNNINGHAM:

Q I have a few questions, Mr. McGuigan. My name is Pierce Cunningham.

A My name is McGuigan, Pierce. If you see it in writing, you can't pronounce it, so don't even look at it in writing.

Q Well, my grandfather was from Ireland. His name was McGaugh, M-c-G-a-u-g-h, and no one else ever knew how to pronounce that, so you may have something in common here.

With respect to your employment, as I understand it, you would have worked for Penn Central, or something similar to Penn Central, between 1948 and 1976; is that right?

A Yes.

Q It is my understanding, further, that you had nothing to do whatsoever with Elkhart, Indiana, railyard, other than perhaps from some distant administrative post; is that right?

A That's right.

Q You knew where it was. But as far as the daily operations, you had nothing to do with Elkhart, Indiana; is that right?

A Uh-huh.

1 Q And, primarily, your responsibilities were, as  
2 you rose through the ranks, the mechanical division of  
3 the Penn Central, and you eventually rose to be the  
4 chief mechanical officer; is that right?

5 A Right, right. I finally attained that exalted  
6 position, yes.

7 Q Right. And most of your life then was spent  
8 in the administrative end rather than, shall we say,  
9 the shop end; is that right?

10 A Yes. I did not -- I didn't perform work in  
11 the shops.

12 Q What about the reporting of hazardous spills,  
13 let's say, in the late '60s, between 1965 and 1970. Do  
14 you have any recollection, Mr. McGuigan, of how such  
15 spills were reported, or how they were handled by Penn  
16 Central at that time? In terms of the paperwork, let's  
17 say.

18 A What kind of paperwork?

19 Q Well, that's what I want to know. Was there  
20 any paperwork associated with, let's say, the spill of  
21 the contents of a tank car into the ground in those  
22 days?

23 A Not that I can recall.

24 Q From a fire standpoint, do you recall whether  
25 there was any kind of procedure in place to notify

1 those in command from the field level up between 1965  
2 and 1970? Or would that be someone else's department?

3 A I don't understand your question.

4 Q All right. It's not the clearest thing in the  
5 world.

6 Would you have knowledge of whether or not  
7 there existed as a procedure at Penn Central between  
8 1965 and 1970 a method of reporting spills in  
9 railyards?

10 A I don't recall. I really don't recall.

11 Q Probably Mr. Manganaro may be the better  
12 person to ask there; is that right?

13 A Well --

14 Q Because he was in the department --

15 A He was more intimately involved in doing  
16 environmental work than anyone else that I can recall.

17 See, on the railroad, the operating department  
18 was the department in charge of clearing wrecks. They  
19 had possession of the waybills. They would -- they  
20 would be the ones that would have the knowledge of the  
21 contents of the cars.

22 Q All right. I was going to ask you a few  
23 questions about that. Who was the head of the  
24 operating department in the days that I'm talking  
25 about, '65 to '70?

1           A     Oh, God. Well, I think -- I think -- I've got  
2 a problem with the semantics here. The operating  
3 department consisted of three major subdepartments:  
4 the mechanical department, the engineering department  
5 and the transportation department.

6           The operating -- the head of the operating  
7 department was the executive vice-president of  
8 operations. He was the man that I worked for.

9           Q     And who was that in this case? Do you recall?

10          A     The last one that I worked for was Mr.  
11 Flannery, and the one before that was Mr. Smucker.

12          Q     Okay. And those gentlemen, are they still  
13 living?

14          A     I have no idea.

15          Q     Do you have any idea where they are?

16          A     I do not.

17          Q     I assume they worked with you in Philadelphia;  
18 is that right?

19          A     Yes.

20          Q     So, when you refer to, in your testimony, the  
21 operating department was responsible for cleanup,  
22 waybills, et cetera, those were the gentlemen who would  
23 have knowledge of those kinds of things?

24          A     Well, I should have probably said the  
25 transportation department, the transportation

1 department.

2 Q Okay.

3 A We always used to refer to it as the operating  
4 department.

5 Q And Flannery was then the head of the  
6 transportation department?

7 A No.

8 Q Who was head of the transportation department  
9 during the time we're talking about?

10 A He would be my colleague, and that would be, I  
11 think, Hasselman. Hasselman was head of the  
12 transportation department. Gordon was head of the  
13 engineering department. And Wiggin was head of the  
14 mechanical department.

15 Q So, during the mid-'60s to '70s, they were the  
16 key players.

17 A Well, no. Wait a minute. They --

18 Q Is that --

19 A I was not made chief mechanical officer until  
20 19-- -- January 1, 1970. Or was it '71? Let me think.  
21 '71.

22 Q But, thinking back five years before that,  
23 Hasselman would have been head of the transportation  
24 department?

25 A Five years before then, I was not chief

1 mechanical officer.

2 Q Right. I'm trying to find out who in  
3 transportation would have been --

4 A Well --

5 Q -- the key players.

6 A Well, let's see, Hasselman -- no, it would be  
7 before Hasselman. It would probably be Mose Harris,  
8 A. M. Harris.

9 Q So there was an A. M. Harris, then Hasselman?

10 A Then Hasselman, yes.

11 Q Where are those gentlemen now?

12 A I have no idea.

13 Q So you have sort of lost track of them?

14 A Yes.

15 Q Again, they were in Philadelphia.

16 A That's right.

17 Q I think it was your testimony that, although  
18 Penn Central was pinching pennies towards the end,  
19 which would be in the early '70s, there were no  
20 shortcuts in the area of safety.

21 A None at all. No, no. I insisted on that.  
22 There were no --

23 Q Okay.

24 A No. We would simply put a car aside. If we  
25 didn't have the money to repair that car or locomotive,

1 we would just simply set that aside. I would not  
2 permit the work to be done on our equipment that was  
3 unsafe, was not up to standard. I would not -- I would  
4 not do that.

5 Q Okay. You've been shown Exhibit A, and you  
6 recall generally what that memo was. And that is an  
7 example of concern for safety; was it not?

8 A Oh, I consider it to be; yes.

9 Q And its purpose, as I read it -- correct me if  
10 I'm wrong -- is primarily for a fire -- to prevent a  
11 fire hazard; isn't that right?

12 A Well, I don't -- as I said before, I'm not  
13 familiar with this. This is the first time -- I may  
14 have seen this before, but this is the first time I've  
15 seen it in years. If I have seen it before, I don't  
16 remember that.

17 Q Calling your attention to, for example, this  
18 last paragraph of page one of the memo, wherein it  
19 states, "It will be necessary to reeducate some of our  
20 personnel so that they do not smoke or use flames where  
21 petroleum distillates are being used." What does that  
22 mean? Does that assist you (tendering document)?

23 A Well, let's see here. (Examining document.)  
24 If I interpret this memo correctly, chlorinated  
25 solvents were discontinued because of the fire hazard.

1 Q Okay. That's what I wanted to know. I think  
2 you've answered my question.

3 A That's my interpretation.

4 Q Well, I thought that memo was intended for it.

5 MR. CUNNINGHAM: And I thank you. That's all  
6 the questions I have.

7 CROSS-EXAMINATION

8 BY MR. ERMILIO:

9 Q Mr. McGuigan, my name is Jim Ermilio, and  
10 represent Conrail, as I explained earlier. Just a  
11 couple brief questions.

12 You mentioned that you did not author the memo  
13 that is Exhibit A. You didn't write that.

14 A No, no.

15 Q Do you remember seeing the memo back during  
16 that time period?

17 A No.

18 Q Do you know what the purpose of the memo was,  
19 other than your interpretation today as you read  
20 through it?

21 A Other than my interpretation today, this is  
22 the first time I've seen it. I don't know -- I have no  
23 idea what the background of this might be.

24 Q You mentioned that Mr. Reed and Mr. Noonan  
25 authored the memo.

1           A     This memo was written by R.T.N., which is  
2 Mr. Noonan's initials; yes.

3           Q     Did you speak to Mr. Noonan around the time  
4 that he wrote that memo?

5           A     No. I never saw this. I don't recall even  
6 seeing this.

7           Q     You didn't discuss it with him, either?

8           A     No.

9           Q     So you don't know why he wrote it?

10          A     No.

11          Q     Do you know what effect that memo had on the  
12 use of chlorinated solvents around the system?

13          A     I presume they discontinued using it, because  
14 I told them not to use it.

15          Q     Discontinued using it effective immediately?

16          A     Well, that's what the letter says; yeah.

17          Q     And if a memo was sent like that, would that  
18 instruction be followed across the system?

19          A     Well, the -- it's like everything else.

20          Q     To the best of your knowledge.

21          A     To the best of my knowledge, it would be, yes.  
22 And whether it was followed or not, it would probably  
23 be followed up by either Mr. Reed or Mr. Noonan or  
24 someone.

25          Q     Was that a general procedure for Mr. Reed and

1 Mr. Noonan?

2 A It depended upon -- it depended upon the  
3 circumstances.

4 Q Okay.

5 A If it was something that was critical to us,  
6 it certainly would be followed up very closely. But if  
7 it was something in the ordinary course of business, it  
8 could fall into a category of instructions going out to  
9 the field from headquarters.

10 I'm certainly not naive enough to think that  
11 everything that was sent out from headquarters was  
12 followed 100 percent. It was our intent that they  
13 should be, let's put it that way.

14 Q Do you know whether these instructions were  
15 followed?

16 A No, I don't.

17 Q Would Mr. Reed or Mr. Noonan be the ones to  
18 answer that question?

19 A I have no idea. You'd have to ask them.

20 Q Okay. Do you remember any discussion of the  
21 use of chlorinated solvents back during that time  
22 period?

23 A No.

24 MR. ERMILIO: I have no further questions.

25 MR. CUNNINGHAM: I just have a couple with

1           regard -- I'm sorry, Peter.

2           MR. RUVOLO: That's okay.

3           MR. CUNNINGHAM: I'll finish up. I had it on  
4           my mind, and it's only a few.

5                           FURTHER CROSS-EXAMINATION

6   BY MR. CUNNINGHAM:

7           Q     Reed, Noonan and those people were in a  
8           separate department. They were in the chemical --

9           A     They were in what I would term a subdepartment  
10          of our engineering section. Mr. Harley was our general  
11          superintendent of equipment engineering. And Mr. Reed  
12          and Mr. Noonan and other technical people of that  
13          nature, they would work for Mr. Harley. And Mr. Harley  
14          worked for me.

15          Q     How large a department was that that dealt  
16          with chemical substances that were used?

17          A     I don't -- I don't remember how large it was.

18          Q     Well, approximately.

19          A     Well, I know there were more than Noonan and  
20          Reed in it, but I don't know. I don't know.

21          Q     Did they have their own laboratory?

22          A     There was a laboratory in existence in  
23          Collingwood, outside of Cleveland. Whether that --  
24          whether that laboratory was used in this particular  
25          circumstance, I do not know.

1 MR. CUNNINGHAM: That's all the questions I  
2 have.

3 REDIRECT EXAMINATION

4 BY MR. RUVOLO:

5 Q I think what you were trying, in answer to  
6 Mr. Ermilio's questions, was that, at times like --  
7 that were going on, you know, between cost cutting and  
8 people trying to make their points in administrative  
9 ways, et cetera, you had no way of knowing whether a  
10 memo such as that would be carried out; isn't that  
11 true?

12 A Say that again. I can't quite understand what  
13 you mean by it.

14 Q The company has financial problems.

15 A Yes, yes.

16 Q Okay. You're in a cost-cutting mode, and you  
17 have people that work for the company that will react  
18 in different ways when they are ordered to cut costs.  
19 So that if there were a policy that came down that they  
20 could save money on by not implementing right away, you  
21 have no -- the chances are that it might have been left  
22 the same, correct?

23 MR. ERMILIO: Objection.

24 MR. RUVOLO: It's a very poorly-stated  
25 question.

1 THE WITNESS: I really don't know. I can't  
2 answer that question.

3 BY MR. RUVOLO:

4 Q Were there any instances that came to your  
5 attention where you know people did not follow a  
6 directive such as that?

7 A No, no. No, no.

8 Q Were there any disciplinary procedures put  
9 into effect in case people didn't follow a directive  
10 such as that? Or any other safety directive?

11 A Well, a directive of this nature, which was  
12 sent out to the field, it would be to the people that  
13 were addressed at the top of the letter, to take this  
14 particular instruction and disseminate it to the  
15 various little shops and filling stations and what have  
16 you that were under their jurisdiction.

17 Q I see.

18 A They were the ones that had the ultimate  
19 responsibility to see that these particular  
20 instructions were carried out. This -- if they failed  
21 to do this? Yes, it would be grounds for discipline.  
22 It would be grounds for discipline. Because this is a  
23 letter from the chief mechanical officer that should be  
24 followed out by the people in the field.

25 That's the general procedure. As far as me,

1 myself, going out to Elkhart at 3:00 o'clock in the  
2 morning to see if this particular solvent was used, no,  
3 that would not -- that would not be my function.

4 Q And if I could ask you: What have you been  
5 doing since 1976?

6 A Playing golf.

7 Q Playing golf.

8 A No. I have to take that back. When I left --  
9 when I left Penn Central, I came down here and worked  
10 at CSX. I retired from CSX. I worked for the Seaboard  
11 Coast Line. I came down here, I think, on a -- the  
12 property was conveyed to Conrail on April 1, 1976, and  
13 I started working down here on April the 4th, 1976, as  
14 system vice-president of operations for the Seaboard  
15 Coast Line. I subsequently retired from CSX in 1986,  
16 January 1, 1986.

17 MR. RUVOLO: Thank you.

18 MR. CUNNINGHAM: That's all.

19 MR. ERMILIO: No questions. We're finished.

20 (Witness excused.)

21 (Thereupon, the deposition was concluded at  
22 approximately 11:15 a.m.)

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24

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C E R T I F I C A T E

STATE OF FLORIDA )

COUNTY OF DUVAL )

I, Elizabeth M. Baxley, RPR-CP, and Notary Public, State of Florida at Large, do hereby certify that pursuant to Notice of Taking Deposition in the above-entitled cause, I sat at the U.S. Attorney's Office, 311 West Monroe Street, Jacksonville, Duval County, Florida, at the time stated hereinabove, and was attended by PETER H. RUVOLO, Esquire, on behalf of the United States of America; JAMES A. ERMILIO, Esquire, Attorney for Consolidated Rail Corporation; PIERCE E. CUNNINGHAM, Esquire, Attorney for Penn Central Corporation; and the witness, J. M. McGUIGAN, who was by me first duly cautioned and sworn to testify the whole truth, and carefully examined, thereupon testified as is hereinabove shown, and that the testimony of said witness was reduced to typewriting under my personal supervision.

I further certify that pursuant to stipulation by and between counsel for the respective parties, and the witness, that the reading and signing of the deposition by the witness was waived.

I further certify that I am neither counsel nor attorney to any of the parties in said cause, nor

1 relative or employee of such attorney or counsel, nor  
2 financially interested in the result of the said cause.

3 I further certify that I have delivered the  
4 original of this transcript to PETER H. RUVOLO,  
5 Esquire, on behalf of the United States of America.

6 WITNESS my hand and official seal in the City  
7 of Jacksonville, County of Duval, State of Florida,  
8 this 15th day of March, A.D., 1993.

9 Elizabeth M. Baxley  
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| OFFICIAL NOTARY SEAL<br>ELIZABETH M BAXLEY<br>NOTARY PUBLIC STATE OF FLORIDA<br>COMMISSION NO. CC194192<br>MY COMMISSION EXP. APR. 16, 1996 |
|---|